

MARCOS L MUSQUEZ,)	
)	
Plaintiff(s),)	No C 07-0809 VRW (PR)
)	
vs.)	ORDER OF DISMISSAL
)	
MAILROOM CLERKS 1-4, et al,)	(Doc # 2)
)	
Defendant(s).)	
)	

In subsequent filings, plaintiff has made clear that although he had not exhausted available administrative remedies when he filed this action back in February 2007, he has done so now.

Unfortunately for plaintiff, the instant action must be DISMISSED without prejudice to refile a new action because it is well-established that a prisoner action must be dismissed unless the prisoner exhausted his available administrative remedies before he filed suit, even if the prisoner fully exhausts

1 while the suit is pending. McKinney v. Carey, 311 F.3d 1198, 1199 (9th Cir.
2 2002); see also Vaden v. Summerhill, 449 F.3d 1047, 1051 (9th Cir. 2006)
3 (where administrative remedies are not exhausted before the prisoner sends his
4 complaint to the court it will be dismissed even if exhaustion is completed by the
5 time the complaint is actually filed).

6 The clerk shall enter judgment in accordance with this order and terminate
7 all pending motions (see, eg, doc # 2) as moot. No filing fee is due.

8 SO ORDERED.

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11 VAUGHN R WALKER
12 United States District Chief Judge
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